

**Merchant Member Agreement**  
**Order Form - Listing**  
(with credit card processing services)

**DELIVERY.com**  
620 Park Avenue South, 2nd Floor, New York, NY 10013  
Phone: 212-294-7708 / 212-294-7709  
Fax: 212-294-7708 / 212-294-7709

Please read carefully, fill out all applicable sections and sign

Merchant Member Name and Address		Merchant Member Delivery Information	
Corporate Name (Full Legal Name) <b>PS BROTHERS GOURMET INC</b>	Federal Tax ID #	Minimum delivery amount, if any USD <b>20</b>	
Business Name <b>INDUS VALLEY</b>		Business hours (Monday - Friday): <b>11:00 am - 2:30 pm 5:30 - 10:00 pm</b>	
Business Type: <input type="checkbox"/> Grocery Store <input checked="" type="checkbox"/> Restaurant - cuisine <b>INDIAN</b> (e.g., "Chinese") <input type="checkbox"/> Other: (Please specify) _____		Delivery hours (Monday - Friday): <b>11:00 am 2:30 pm 5:30 pm 10:30 pm</b>	
		Business hours (Saturday & Sunday): <b>(11:00 am - 2:30 pm 5:30 pm 10:30 pm)</b>	
		Delivery hours (Saturday & Sunday): <b>11:00 am 2:30 pm 5:30 pm 10:30 pm</b>	
Address <b>2636 BROADWAY</b>		Merchant Member's delivery charge, if any! USD	
City <b>NY</b>	State <b>NY</b>	Initiate if you DO NOT WANT TO ACCEPT CASH FOR SITE CUSTOMER ORDERS:	
Phone (212) <b>222-9222</b>	Fax (212) <b>286-4110</b>	Do you offer? (Please pick one) <input checked="" type="checkbox"/> Delivery & pickup <input type="checkbox"/> ONLY pickup	
ZIP/Postcode <b>10025</b>		Your delivery ratings, if applicable (How far in which direction do you deliver?) (e.g., "Within 500 ft", "South to North", "Local", "Long Distance")	

Merchant Member Contact Information			
Owner	First Name, Last Name <b>LAKHVI SINGH</b>	E-mail Address <b>lakhvi@indusvalley.com</b>	Direct Phone Number <b>212-222-9222</b>
Manager			
Per menu or Delivery List (Inquiries, contact)			

Sales Tax <b>4%</b>	Sales Tax Comments: (Please attach additional pages, if necessary.)
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Receiving Orders (Pick up/delivery)	Confirming Orders	Requirements/Description *	Order Processing Fee (per order)	Commissions Percentage
<input type="checkbox"/> Online	Online	Merchant Member must have a computer with internet access, easily accessible and available to staff at all times.	No fee (USD\$0.00)	10%
<input checked="" type="checkbox"/> Fax	Automated call	Merchant Member must have a working fax machine operating on independent fax line easily accessible and available to staff at all times. (No shared lines.)	USD\$0.40	

\* Although we will use all reasonable efforts to use the selected method of order receipt and confirmation, doing so depends on your compliance with the Requirements/Description and other circumstances beyond our control and is not guaranteed.

Also, please note that an Order Processing Fee of USD\$0.75 per order applies to all orders confirmed verbally by a customer service representative.

Method of Payment (Please pick one)	Payment Period	Form of Account Statement	Account Statement Fee
<input checked="" type="checkbox"/> Direct deposit into your bank account. (Please endorse valid check and pick the applicable Payment Period.)	<input type="checkbox"/> Weekly <input type="checkbox"/> Twice a month <input checked="" type="checkbox"/> Monthly	ONLY electronic account statement accessible on the Site	No fee (USD\$0.00)
<input type="checkbox"/> Check	<input checked="" type="checkbox"/> Monthly	Hard copy account statement sent by mail	USD\$2.00, per account statement

This Order Form - Listing (with credit card processing services) is subject to the Merchant Member Agreement - Terms and Conditions (with credit card processing services) (version merchant member agreement 8/01) previously agreed to by the Merchant Member or attached hereto or sent to Merchant Member along with this Order Form (the "Terms and Conditions"). All capitalized terms used in this Order Form shall have the meaning ascribed to such terms in the Terms and Conditions. By signing a copy of this page in the appropriate place shown below and returning the same to Delivery.com, LLC, Merchant Member confirms its intent in being listed or continuing to be listed on the Site and its agreement to this Order Form and the Terms and Conditions.

FOREGOING AND THE ANNEXED TERMS AND CONDITIONS AGREED TO AND ACCEPTED:			
Delivery.com, LLC		Corporate Name of Merchant Member	
By:		By:	<b>Lakhvi Singh</b>
Signature		Signature	<b>LAKHVI SINGH</b>
Name (print)		Name (print)	<b>LAKHVI SINGH</b>
Callin Singh		Title (print)	<b>Owner</b>
Title (print)		Date	<b>2-4-2009</b>
Chief Operating Officer			
SALES REPRESENTATIVE NAME: COO		EMAIL: <a href="mailto:winter@delivery.com">winter@delivery.com</a>	PHONE: 212-294-7708 FAX: 212-294-7708

Have questions? Please call or e-mail your Sales Representative, or call the general number (800) 708-7191 and ask for the online desk.  
Please fax signed Order Form to your Sales Representative.

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**Merchant Member Agreement  
Terms and Conditions  
(with credit card processing services)**



These Terms and Conditions and the Order Form signed by Delivery.com, LLC and Merchant Member whose name appears on the Order Form (collectively, the "Agreement") set forth the terms and conditions on which Delivery.com, LLC is willing to provide to Merchant Member certain listing and advertising services using the Site (as defined below). In the event of a conflict between the Order Form and these Terms and Conditions, these Terms and Conditions shall govern and control. Delivery.com, LLC and Merchant Member agree as follows:

1. **Definitions.** As used in this Agreement the terms "we", "our", "us" and "ours" mean Delivery.com, LLC; the terms "Merchant Member", "you" or "your" mean the entity which is agreeing to these terms; the term "Advertisement Base" means the total fees corresponding to the Advertisement Type agreed by the parties on the applicable Order Form as well as miscellaneous advertisement administration fees agreed by the parties from time to time, unless, in each case, paid by credit card, debit card or check as agreed by the parties on the applicable Order Form; the term "Account Statement Fees" means total fees corresponding to the Form of Account Statement agreed by the parties on the applicable Order Form; the term "Commission" means the Commission Percentage agreed by the parties on the applicable Order Form multiplied by the Total Sales Amount; the term "Credit Card Order Amount" means the total amount received by us for the Site customer orders transmitted by us to you during the applicable Payment Period and paid for by the Site customers using credit cards (e.g., American Express, Discover, Visa and/or MasterCard), debit cards (e.g., bank and/or university issued) or gift cards only (in each case, including tax, delivery, convenience or similar charges or fees and gratuities) net of charge-backs and fraudulent charges; the term "Delivery List" means a complete list of food, beverages, household, flower, gift and other items available for delivery and/or pick-up, their prices, availability and, where applicable, images; the term "Payment Period" means the period agreed by the parties on the applicable Order Form; the term "Processing Fees" means the total amount of fees (corresponding to the actual method the orders were received and confirmed) for the orders of the Site customers transmitted by us to you during the applicable Payment Period plus Account Statement Fees plus miscellaneous listing and/or Delivery List administration fees agreed by the parties from time to time; the term "Site" means our website using which customers may place orders for food, beverages, household, flower, gift and other items for delivery and/or pick up, currently with the domain name [delivery.com](http://delivery.com); "Total Sales Amount" means the total dollar amount of the Site customer orders excluding tax and gratuity (but including delivery, convenience or similar charges and fees) transmitted by us to you during the applicable Payment Period and paid for by the Site customers using all types of payment, including credit cards, debit cards, gift cards or cash; and "including", "includes", "e.g." and the like mean "including, without limitation". All other capitalized terms used in the Agreement are defined below.

2. **Merchant Member's obligations.** (A) You agree to provide to us any and all information, and content, including your Delivery List, images, logo and graphics, in each case, in the format reasonably requested by us from time to time to enable us to provide to you the credit card processing services, listing and advertising services using the Site. You represent and warrant that (i) you hold and shall continue during the term of this Agreement to hold any and all permits, authorizations and licenses necessary and/or required to operate your business; (ii) any and all information and content provided by you or on your behalf in connection with the credit card processing services, listing and advertising services we provide to you and/or this Agreement is accurate, complete and you have the right to provide and we have the right to use such information and content in connection with listing and/or advertising services and/or this Agreement without violation of any proprietary or other right of any third party or any law, rule or regulation; and (iii) you operate and shall continue to operate your business in compliance with all applicable laws, rules and regulations. (B) You shall not disclose to any third party or use for any purpose other than delivering to such Site customers their orders for food, beverages, household, flower, gift and/or other items placed by such customers using the Site, any information of or regarding the Site customers that we may provide to

you. You agree to comply with any and all requirements of the credit card associations, credit card processors and ours in connection with this Agreement, credit card processing services, listing and/or advertising services we may provide to you and any and all laws, rules, regulations and ordinances applicable to your business and/or operations. You agree not to disclose the terms or conditions of this Agreement, except to your officers, directors, employees, attorneys and accountants with a need to know who are bound by a duty of confidentiality. (C) You shall maintain the same prices for the services, food, beverages, household, flower, gift and other items listed on the Site as you do in your physical store and on your website and shall honor discounts and promotions offered or advertised by you from time to time. You agree to accept any and all orders placed through the Site, honor the prices quoted on the Site at the time the order is placed, timely update the Delivery List, including price and item description and availability changes. (D) For the avoidance of doubt, you may accept cash for Site customer orders unless (i) agreed otherwise by the parties on the applicable Order Form, or (ii) notified by us in writing from time to time.

3. **Use of Merchant Member's Name, Logo and Delivery List.** Except as permitted in this Agreement, neither party shall use the other party's or its affiliates' name(s), trademark(s), service mark(s) or trade name(s) without the prior written consent of the other party. We may, from time to time, list item(s) from the Delivery List on the Site and may use your and your affiliates' name(s), trade name(s), trademark(s), service mark(s), logo(s) and Delivery List in connection with our credit card processing services, listing and advertising services and/or this Agreement, in each case, without any fee, license or charges payable by us. For the avoidance of doubt, we may reference your name as one of our merchant members, including in our standard marketing materials or, with your cooperation and approval, press releases.

4. **Credit Card Processing Services; Fees; Taxes.** We will provide you with credit card processing services for the orders placed with you by the Site customers using the Site. Following the end of the Payment Period agreed by you and us on the applicable Order Form, we will pay you the following amount using the Payment Method agreed by you and us on the applicable Order Form: Credit Card Order Amount minus Commissions minus Processing Fees minus, where selected by you and agreed by the parties on the applicable Order Form - Advertising, Advertisement Fees. In the event that Credit Card Order Amount is less than the sum total of the Commissions, Processing Fees and Advertisement Fees (collectively, "Fees"), you shall promptly pay to us the amount by which the Fees exceed the Credit Card Order Amount as indicated on your account statement issued by us and accessible to you (whether assessed by you or not) by mail or on the Site, as agreed by the parties on the applicable Order Form. Any and all sales, use and other taxes which may be levied as a result of this Agreement shall be your responsibility, excluding taxes based on our net income. To help you comply with your regulatory obligations, we have included in the Order Form - Using a field titled "Sales Tax" that will allow us to add the applicable sales tax indicated by you to the orders placed by the Site customers with you using the Site. You represent and warrant that the percentage of the sales tax indicated on the applicable Order Form and the comments provided by you in the Sales Tax Comments field of the applicable Order Form comply with any and all applicable laws, rules and regulations. Unless indicated by you in writing in the Sales Tax Comments field of the applicable Order Form, we shall, on your behalf, apply such tax percentage to all items in your Delivery List.

5. **Term; Termination; Survival.** The term of this Agreement shall commence on the later of the two dates set forth in the signature blocks on the applicable Order Form and shall continue until terminated by either party by at least sixty (60) days prior written notice to the other party. In addition, we may suspend any services hereunder or terminate this Agreement by a written notice to you. In each case, in whole or in part, including in the event of any breach of Section 2(B). Following termination of this Agreement, we shall use reasonable efforts to promptly remove Merchant Member's listing and Delivery List from the Site, provided, however, that this Agreement shall continue in full force and effect until such listing and Delivery List are removed or cease to be accessible to the

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Site customers. Sections 2(B), 4, 5, 6 and 8 shall survive termination of this Agreement.

6. **No Liability; Indemnification.** You shall indemnify and hold harmless us, our affiliates and our and their officers, partners, employees, agents, vendors and the Site customers (collectively, "Indemnified Parties") from and against any and all claims, demands, losses, costs, liabilities, damages and expenses (including investigation fees and reasonable attorneys' fees) related to or arising out of (a) any breach of this Agreement by you or on your behalf, (b) advertising or other information, images or content provided to us by you or on your behalf, and/or (c) any of your operations or acts or omissions of yours, of any member(s) of your network that fulfill the orders of the Site customer placed with you using the Site and/or of your or their employees or agents. (For the avoidance of doubt, this includes claims for tax liabilities, libel, plagiarism, copyright infringement, trademark and trade dress infringement, and unauthorized use of a person's name or image.) You represent and warrant that you have the right to provide to us any and all advertising and other content and such content is not infringing, misappropriating or violating any rights of any third parties. Save for our liability for the amounts payable by us pursuant to Section 8, Indemnified Parties shall have no liability for any damages of any kind, including direct, indirect, punitive or consequential, even if they were advised of the possibility thereof, that occur or may occur as a result of credit card services provided to you, your listing or advertising on the Site, including incorrect listings or conveyance of banking information, fraudulent orders, non-payment by the Site customers or any other damages.

7. **Marketing of Delivery.com.** You agree to: (i) prominently display our promotional and/or advertising materials (as provided by us from time to time) in your physical store, including a window sign and a cash register sticker; (ii) insert flyers or cards advertising the Site (as provided by us from time to time) into all bags or packaging containing orders placed using the Site; and (iii) include our logo and brief marketing message (as provided by us from time to time) on your delivery/takeout menus and/or products/services lists. You shall ensure that no marketing or similar materials of any other company that offers online ordering or that aggregates merchant listings as its primary business shall be included with or as part of packaging of the delivered or picked up beverages, food, household, flower, gift or other items ordered by the Site customers.

8. **Mitigation.** Our rights and remedies and your obligations in this Agreement are cumulative and are in addition to our rights and remedies and your obligations under any agreement between you and us. We may modify the terms of this Agreement prospectively with twenty (20) days' prior written notice to you. In cases where such changes modify payment obligations, fees or length of term, you shall have the option, exercisable on written notice to us given within such twenty (20) day period, to terminate this Agreement. You may not assign your rights or obligations hereunder without our prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. This Agreement may be assigned by us at any time. You acknowledge and confirm that any failure on your part to adhere strictly to the terms and conditions of this Agreement is likely to result in substantial damages to us and may cause irreparable injury to us. Accordingly, in addition to all other remedies that we may be entitled to as matter of law, we shall be entitled to specific performance and other equitable relief, including temporary and permanent injunctive relief, to enforce this Agreement. This Agreement shall be governed by and construed in accordance with the law of the State of New York without regard to the conflicts of law principles thereof, and any action brought in relation to this Agreement shall be brought in a Federal or State court in New York County, New York State. All of your obligations under this Agreement shall apply fully to all members of your network that fulfill the orders of the Site customers placed with you using the Site if they were "you" under this Agreement and any provision of this Agreement that contains your obligation shall be deemed to include an obligation to cause such members to comply with such obligations and you shall remain liable for the performance of members hereunder. Each party waives any right to trial by jury with respect to any dispute, suit, action or

proceeding arising out of or relating to this Agreement or otherwise relating to the relationship of the parties, whether in contract, tort or otherwise. Your use of the Site is subject to our terms and conditions posted on the Site. You acknowledge that, from time to time, we may record certain telephone lines used for the customer service and/or related purposes, and to the extent that any such recording occurs involving you or any of your employees, agents and/or subcontractors, then you on behalf of yourself and your employees, agents, and subcontractors, consent thereto or will ensure that such other party consents thereto. Except as provided in the immediately preceding sentence, this Agreement constitutes the entire agreement of you and us with respect to the subject matter hereof, supersedes any prior agreement between you and us on the subject matter hereof and no modification or waiver of any provision hereof will be binding upon us unless in writing and signed by us.

*(Remainder of the page intentionally left blank.)*